

US EPA ARCHIVE DOCUMENT

**SECTION X
APPENDICES**

A. MEMORANDUM OF AGREEMENT BETWEEN DEP AND EPA

APPENDIX A

MEMORANDUM OF UNDERSTANDING
BETWEEN
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
WEST VIRGINIA PUBLIC SERVICE COMMISSION
AND
WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS

This Memorandum of Understanding ("MOU") is executed by and between the West Virginia Department of Environmental Protection ("DEP") and the West Virginia Public Service Commission ("PSC") and the West Virginia Department of Transportation, Division of Highways ("DOH") in order to set out the roles and responsibilities of the parties necessary to coordinate and perform the duties outlined in the West Virginia Hazardous Waste Management Act ("the Act") and the federal Resource Conservation and Recovery Act ("RCRA"). This MOU is effective February 4, 2013 and shall remain in effect until superseded or amended in writing.

WHEREAS, the Legislature has designated DEP as the hazardous waste management lead agency for this State for purposes of Subtitle C of RCRA and has authorized DEP to take all action necessary or appropriate to secure to this State the benefits of Subtitle C of RCRA;¹ and

WHEREAS, the Legislature has authorized DEP to cooperate with other agencies of State government in all matters relating to hazardous waste management;² and

WHEREAS, the Legislature has authorized PSC to implement a hazardous materials transportation registration and permitting program for operators of motor vehicles transporting hazardous materials upon or over the public highways within the borders of this State,³ and PSC has done so at 150 C.S.R. 23 (*Rules and Regulations Implementing a Uniform Registration and Permitting Program for Motor Carriers Carrying Hazardous Waste*) ("Manifesting Rule"); and

WHEREAS, the Legislature has given DEP the overall responsibility for the promulgation of rules establishing a plan for the safe and effective management of hazardous wastes within the State and rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes that are subject to the provisions of the Act,⁴ and DEP has done so at 33 C.S.R. 20 (*Hazardous Waste Management Systems*) ("Hazardous Waste Rule"); and

WHEREAS, DEP's Hazardous Waste Rule incorporates by reference federal RCRA regulations 40 C.F.R. parts 262, 263, 266, 273, and 279 regulating hazardous waste transportation within the State; and

¹ W. Va. Code § 22-18-4

² Id.

³ W. Va. Code § 24A-6B-1(a)

⁴ W. Va. Code § 22-18-6(a)

WHEREAS, the Legislature has directed DOH, in consultation with DEP, to promulgate legislative rules governing the transportation of hazardous wastes by vehicle upon the roads and highways of this State,⁵ and DOH has done so at 157 C.S.R. 7 (*Transportation of Hazardous Wastes Upon Roads and Highways*) ("Highways Transportation Rule"); and

WHEREAS, the Legislature has directed PSC, in consultation with DEP, to promulgate legislative rules governing the transportation of hazardous wastes by railroad in this State,⁶ and PSC has done so at 150 C.S.R. 11 (*Rules Governing the Transportation of Hazardous Waste by Rail*) ("Rail Transportation Rule"); and

WHEREAS, the requirements of PSC's Rail Transportation Rule are equivalent to federal RCRA regulations set out in 40 C.F.R. part 263; and

WHEREAS, the Legislature has granted the Parties co-extensive enforcement and inspection powers with respect to the transportation of hazardous waste within the State;⁷ and

WHEREAS, DEP, PSC, and DOH desire to coordinate their efforts to regulate the transportation of hazardous wastes upon the roads, highways, and railroads of this State in order to avoid inconsistencies in and duplication of each other's rules and programs and in order to retain federal authorization of the hazardous waste management program.

NOW THEREFORE, in consideration of the obligations, mutual promises, covenants, and agreements of the Parties as set forth in this MOU, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, DEP, PSC, and DOH agree as follows:

1. PSC and DOH will continue to perform hazardous waste carrier safety inspections.
2. The Parties will continue to promulgate and enforce rules and other program requirements pursuant to the statutory authority outlined in this MOU. Further, the Parties will continue to update their rules, as necessary, to maintain consistency and to retain authorization for the State's hazardous waste management program by the federal Environmental Protection Agency ("EPA").
3. The Parties will keep records memorializing the performance of their respective responsibilities under the Act and will make copies of those records available to each other to review upon written request. The Parties will further cooperate and coordinate to ensure that information concerning transportation of hazardous wastes is shared.
4. The Parties will comply with the United States Office of Management and Budget audit requirements in order to enable the EPA and DEP to inspect their records for compliance with the appropriate federal and State laws.

⁵ W. Va. Code § 22-18-7(a)

⁶ W. Va. Code § 22-18-7(b)

⁷ W. Va. Code § 22-18-7(a) and (b)

5. In the event of a release of hazardous waste while it is in transport, DEP will continue to provide emergency response and remediation services to protect human health and the environment. Specifically, DEP's Office of Homeland Security & Emergency Response will coordinate emergency response services, investigate the release, and conduct site remediation activities. PSC and DOH will continue to cooperate and assist, as necessary, DEP in those endeavors.

6. The Parties will continue to cooperate with each other in implementing the Act and will work to ensure that the State retains federal authorization for its hazardous waste management program. Each agency is committed to mutual support and assistance.

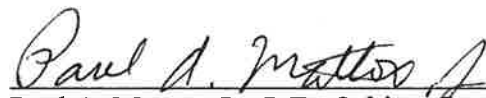
7. The Parties may, by mutual written agreement in letter form, amend this MOU as necessary to effectuate and coordinate their respective legal obligations, or they may supersede it with a new MOU.

IN WITNESS WHEREOF, the parties represent and warrant that they are duly authorized to enter into and execute this MOU on behalf of the party for which they have affixed their signatures below and have executed the same on the date set forth below, to become effective as of the date set forth above.



Randy C. Huffman, Cabinet Secretary
West Virginia Department of Environmental Protection

Date: 4/2/13



Paul A. Mattox, Jr., P.E., Cabinet Secretary
West Virginia Department of Transportation/
Commissioner Division of Highway


Date March 26, 2013



Michael A. Albert, Chairman
West Virginia Public Service Commission

Date: March 29, 2013

APPROVED AS TO FORM THIS
25th DAY OF Mar 20 13



ATTORNEY LEGAL DIVISION
WEST VIRGINIA DIVISION
OF HIGHWAYS

